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**IN THE
COURT OF APPEALS OF INDIANA**

SEAN MONAGHAN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0609-CR-749
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben B. Hill, Judge
Cause No. 49F18-0501-FD-13064

JUNE 1, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Sean Monaghan (“Monaghan”) appeals from the trial court’s restitution order after Monaghan’s conviction after a bench trial of theft, a Class D felony. Ind. Code §35-43-4-2.

We affirm in part, and reverse and remand in part.

ISSUE

Monaghan presents the following issue for our review: whether the trial judge abused his discretion in entering the restitution order considering the evidence presented about the loss sustained and Monaghan’s ability to pay.

FACTS AND PROCEDURAL HISTORY

Monaghan was employed by Loomis-Fargo and Company (“Loomis”) from November 2001 until July 29, 2004. Loomis is a cash handling company, and Monaghan was one of their coin processors. Loomis handles the movement of money from the Federal Reserve Bank to retailers and other financial institutions, processes cash for financial institutions, and holds inventories of coin. One of the financial institutions Loomis serves is Regions Bank, formerly known as Union Planters. Loomis collects the coin deposits made by Regions’ customers, counts the coin, and houses an inventory for Regions’ accounts.

Monaghan’s duties as a coin processor included tallying the coin through a counter, weighing it to obtain an estimate, and ensuring that the coin was credited to the correct accounts. Coin processors also take coin from the Loomis vault and place it in a client’s inventory. Once the coin is weighed and verified, the processor fills out a credit

memo. The purpose of the credit memo is to instruct the institution to credit an account with a specified amount of coin. The processor also generates a recap sheet, which logs the date, the branch number, the names of bank customers, their account numbers, the amount to be credited and in what denominations. The recap sheet is then delivered by the processor to an audit representative who types the information into Excel format. The spreadsheet is then emailed to the client, so they can match it against their records and credit their customers.

On September 1, 2004, Michael Carrigan, the Loss Prevention Manager for Loomis, discovered a coin shortage. Carrigan suspected a paperwork discrepancy, so he inspected Monaghan's personnel file. Carrigan learned that Monaghan's paycheck was directly deposited into a personal account with Regions. Monaghan's personal account number matched one in Loomis' business records of client deposits. Carrigan reported his findings to the Indianapolis Police Department in order to begin a criminal investigation of Monaghan.

I.P.D. Detective Barbara Bertram was assigned to the investigation. Det. Bertram subpoenaed Monaghan's bank records and credit memos, and then obtained recap sheets from Loomis. Det. Bertram compared credit memos that accompanied each of Monaghan's bank statements with the recap sheets. She discovered that one of the recap entries matched Monaghan's personal checking account at Regions Bank. Det. Bertram was then able to track the coin coming from Loomis over to Monaghan's personal account by using the credit memos and monthly statements. Monaghan had physically

moved bags of money from other skids in the Loomis vault to Regions' skid and filled out the associated paperwork to credit his personal checking account.

On January 31, 2005, the State charged Monaghan with one count of theft, a Class D felony. Although Monaghan was charged along with another Loomis employee, Monaghan was tried separately. Monaghan's bench trial was held on May 15, 2006. At the conclusion of the trial, the trial court found Monaghan guilty as charged. Monaghan received a three-year sentence, with two years suspended to probation. Monaghan was ordered to pay restitution in the amount of \$24,000.00 during probation. This appeal follows.

DISCUSSION AND DECISION

An order of restitution is a matter within the trial court's discretion, and we reverse only upon a showing of abuse of that discretion. *T.C. v. State*, 839 N.E.2d 1222, 1224 (Ind. Ct. App. 2005). An abuse of discretion occurs when the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

At trial, the State submitted documentary and testimonial evidence that established the theft of \$16,219.73 from Loomis. However, the trial judge issued an order requiring Monaghan to make restitution in the amount of \$24,000.00. Although Carrigan reported the loss as totaling \$24,000.00, Carrigan's argument to support that figure was based upon documents and the time involved in prosecuting the case, and "other monies" associated with investigating the loss. The State acknowledges that the trial judge's restitution order in the amount of \$24,000.00 is not supported by the evidence.

Restitution must reflect actual loss incurred by a victim. *T.C.*, 839 N.E.2d at 1225. Furthermore, the amount of actual loss is a factual matter that can be determined only upon the presentation of evidence. *Id.* The expenditure of time and “other monies” sought by Loomis might be recoverable as an ancillary cost or loss. *See Huddleston v. State*, 764 N.E.2d 655, 657 (Ind. Ct. App. 2002). However, those costs or losses were supported at trial by only an oral request for consideration of that amount by the victim. Because the evidence supports a restitution order in the amount of \$16,219.73 instead of \$24,000.00, we must remand this matter to the trial court for the entry of a restitution order in an amount that conforms to the evidence, \$16,219.73.

Monaghan also argues that the trial judge abused his discretion by failing to inquire into Monaghan’s ability to pay prior to entering the restitution order. Ind. Code §35-38-2-2.3(a)(5) provides that as a condition of probation, the court may require a person to make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance. *Id.*

The statute is not specific as to the form the court must follow in determining a defendant's financial status. In the present case, the trial court, at sentencing, inquired into Monaghan’s employment and wages, which were \$20 per hour. The pre-sentence investigation report contained information about Monaghan’s debts and employment history. The report contained the information that Monaghan’s mental and physical

health were good. Monaghan's stepchildren were all over the age of twenty-two. Further, Monaghan had earned a certificate from Ohio Diesel Technical School.

Given the discretion trial judges possess by statute in inquiring about a defendant's ability to pay, the above information was adequate to allow the trial court to make an informed and fair decision as to the amount of restitution to be paid. The trial judge did not abuse his discretion.

As for setting the method of payment, that will have to be set up through probation after Monaghan has served the executed portion of his sentence. The trial judge, by stating that the restitution had to be paid during Monaghan's probation, allowed Monaghan the flexibility he might need in making those payments. The trial judge did not err.

CONCLUSION

The trial judge's restitution order must be reversed to the extent the amount exceeds what is supported by the evidence. This matter is remanded to the trial court to enter a restitution order that conforms to the evidence. The trial judge did not abuse his discretion in inquiring into Monaghan's ability to pay the restitution.

Affirmed in part, reversed and remanded in part.

BAILEY, J., and MATHIAS, J., concur.